

§ 78A-18. Denial and revocation of exemptions.

(a) The Administrator may by order deny or revoke any exemption specified in subdivision (9), (11), or (15) of G.S. 78A-16 or in 78A-17 with respect to a specific security or transaction. No such order may be entered without appropriate prior notice to all interested parties, opportunity for hearing, and written findings of fact and conclusions of law, except that the Administrator may by order summarily deny or revoke any of the specified exemptions pending final determination of any proceeding under this section. Upon the entry of a summary order, the Administrator shall promptly notify all interested parties that it has been entered and of the reasons therefor and that within 20 days of the receipt of a written request the matter will be scheduled for hearing in accordance with Chapter 150B of the General Statutes. If no hearing is requested and none is ordered by the Administrator, the order will remain in effect until it is modified or vacated by the Administrator. If a hearing is requested or ordered, the Administrator, after notice of an opportunity for hearing to all interested persons, may not modify or vacate the order or extend it until final determination. No order under this subsection may operate retroactively. No person may be considered to have violated G.S. 78A-24 or 78A-49(d) by reason of any offer or sale effected after the entry of an order under this subsection if he sustains the burden of proof that he did not know, and in the exercise of reasonable care could not have known, of the order.

(b) In a civil or administrative proceeding brought under this Chapter, the burden of proving an exemption or an exception from a definition is upon the person claiming it. In a criminal proceeding brought under this Chapter, the State has no initial burden of producing evidence to show that the defendant's actions do not fall within the exemption or exception; however, once the defendant introduces evidence to show that his conduct is within the exemption or exception, the burden of persuading the trier of fact that the exemption or exception does not apply falls upon the State. (1925, c. 190, ss. 5, 11; 1927, c. 149, ss. 5, 11; 1973, c. 1380; 1975, c. 19, s. 20; 1987, c. 849, s. 2; 1989 (Reg. Sess., 1990), c. 803, s. 2; 2001-126, s. 1; 2001-149, s. 2.)